

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 435 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

HEIRS OF SITABAI RAMCHANDRA S RAGUNATH RAMCHANDRA S BAXI

Appearance:

Shri V.B.Gharaniya for Petitioners

MR SP HASURKAR for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/12/98

ORAL JUDGEMENT

This revision application under section 115 of the CPC, 1908 by the defendant petitioner arises from the order of the 3rd Extra Assistant Judge, Vadodara below Ex.19 in Civil Misc. Application No.120/90, under which the First Appellate Court has rejected the application for condonation of delay caused in filing of the regular appeal against judgement and decree of Second Assistant Small Causes Judge, Vadodara in Rent Suit No.484/91.

2. The facts of the case in brief are that the plaintiff respondents are owners of the suit premises situated at Bani Bada, Main Road, Baroda. The suit premises had been rented to the defendant petitioners by the owners. A suit has been filed for eviction of the defendant petitioners from the suit premises inter alia on the ground that the defendant petitioner has got alternative accommodation and other ground has also been taken that the defendant petitioner has made changes or alteration in the suit premises and thereby they have committed breach of the terms of the tenancy. This suit was registered as Rent Suit No.484/81 in the Court of Second Additional Judge, Small Causes Court, Baroda. The suit was came to be decreed by the learned Trial Court on 29.9.89. Against this judgement and decree the defendant petitioners filed appeal before the First Appellate Court which was presented on 18.8.90. A objection has been raised by the Registry of the court that this appeal is barred by limitation. A application has been filed by the defendant petitioners for condonation of delay caused in filing of this appeal. It was the case of the defendant petitioners that they were not negligent in preferring the appeal. They came to know about the decree of the Trial Court on 17.8.90 and thereafter immediately the appeal has been filed in the Appellate Court. Under the impugned order this application came to be rejected. Hence this revision application before this Court. The execution of the decree passed by the Trial Court has been stayed by this Court and it remained stayed for all these years.

3. The Learned Counsel for the defendant petitioners submitted that the learned First Appellate Court has taken a very technical view in the matter and thereby declined to condone the delay caused in filing of the appeal. In the matter of the condonation of delay caused in filing of the appeal the Courts are to take a liberal view unless it is shown to be a case of malafide on the part of the litigant, praying for condonation of delay caused in filing of the appeal or has deliberately made delay in filing of the appeal. Only in those cases the first Appellate court could have declined to condone the delay caused in filing of the appeal. In support of this contention the learned Counsel for the petitioner places reliance on the latest pronouncement of the Hon'ble Supreme court of India in the case of N Balakrishnan Vs. M.Krishnamurty 1998 7 SCC Pg.123.

4. On the other hand the learned counsel for the respondents contended that it is a case where the defendant petitioners are unable to establish the case

with which they have come up before the First Appellate Court for delay caused in filing of the appeal. In the subsequent affidavit they have come up with a got-up case and the learned First Appellate Court has taken it to be a false explanation in making a case for condonation of delay.

5. It is next been contended that it is the discretion of the First Appellate Court to condone or may not condone the delay and when the discretion is exercised judicially this court in revision application may not interfere therewith. Lastly it is contended that howsoever erroneous the findings of the Court below may be thereon sufficient cause to condone the delay caused in filing of the appeal, it has nothing to do with the exercising of jurisdiction by the First appellate Court in passing of order and the case does not fall under clause c of sub section (1) of Section 115 of the CPC.

6. I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties.

7. After pursuing the impugned order of the First Appellate Court it is borne out that 2 contradictory explanations are to being given by the defendant petitioners for the condonation of delay caused in filing of the appeal. The ground with which the defendant petitioners came for condonation of delay caused in filing of the first appeal in the application is not in consonance with the ground sought to be given out in the later affidavit. But the learned First Appellate Court has to consider an important fact that these Officers may have not stated the correct facts or they would have manufactured some grounds but still it is a matter of the State Government where no officer either way going to lose anything. The matter has to be considered with reference to the fact that it is a case where a eviction decree has been passed against the defendant petitioners and in case the decree is allowed to go unchallenged, the result thereof would have been their eviction from the suit premises. The Learned First Appellate Court knows that the decision not to condone delay would result in foreclosing a suitor from putting forth his cause. It is thus no presumption that delay in approaching the court is always deliberate. In the case of Shankuntaladevi Jain Vs. Kuntalkumari AIR 1976 SC Pg.575 and State of West Bengal Vs. Administration Howrah Municipality 1972 (1) SCC Pg.366, the Apex Court has held that words "sufficient cause" under section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. In the case of N Balakrishnan Vs.

M.Krishnamurty 1998 7 SCC Pg.123 (Supra), the Apex court observed that it must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. The Court has further said that if the explanation does smack of malafide or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. The primary function of the Court is to adjudicate the disputes between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The Rule of limitation are not meant to destroy the rights of the parties. These are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The object of providing a legal remedy is to repair damage caused by reason of legal injury. In para No.9 of this judgement, the Hon'ble Supreme Court has observed:-

"9. It is axiomatic that condonation of delay

is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

8. From reading of the impugned order, I find that the learned First appellate court has proceeded to find out the faults, and to certain extent the negligence which has been made by the defendant petitioners in

conducting the suit in the Trial court. These are not the relevant considerations while considering the application for condonation of delay caused in filing of the appeal. The Court is concerned with the explanation furnished for the delay occurred after the pronouncement of the judgement by the Trial Court in the present case. Any conduct or negligence or carelessness in defending the suit in the Trial court i.e. early in point of time of the date on which the decree is passed, are of no relevance whatsoever in the matter of consideration and deciding the application under section 5 of the Limitation act filed for condonation of delay caused in filing of the appeal against the decree passed by the Trial Court. In this case, the learned first Appellate court has not recorded the finding of fact that the application filed by the defendant petitioner is malafide or they have adopted any dilatory tactics to delay the filing of the appeal. It is not the case of the respondent nor is it a finding of the appellate court that defendant petitioners have deliberately and wilfully acted in the matter to see that the limitation prescribed in filing appeal is expired. Here I consider it to be fruitful to refer here the observation made by the Hon'ble Court in the case of N.Balakrishnan Vs. M.Krishnamurthy (Supra) made in para no.13 thereof;

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

9. In the result this revision application succeeds and same is allowed. The order of the 3rd extra assistant Judge, Vadodara in Civil Misc. Application No.120/90 dated 10.9.91 is quashed and set aside and the

application filed by the defendant petitioner under Section 5 of the Limitation Act for condonation of delay caused in filing of the appeal against the judgement and decree of the learned Trial court is granted and the delay is condoned subject to the payment of costs of Rs.1000/- to the respondents. Rule stands disposed of in the terms aforesaid. The petitioners are directed to pay Rs.1000/- as costs of this Civil Revision Application.

10. In view of the fact that the Civil Revision Application has been decided no orders on the civil application This Civil Application stands disposed of.

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